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8 Attorneys for Plaintiff

9 THOMAS ARMSTRONG

10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

13 THOMAS ARMSTRONG,

14 Plaintiff,

15 v.

16 GROSSMONT CUYAMACA COMMUNITY  
17 COLLEGE DISTRICT, and DOES 1 through 50,  
18 inclusive,

19 Defendants.

20 CASE NO.:

21 **COMPLAINT FOR DAMAGES**

22 1. Retaliation [Govt. Code §12940(h)]  
2. Violation of Labor Code §1102.5  
[Whistleblower Protection Act]  
3. Violation of California Business &  
Professions Code §17200 [Unfair Competition]

23 Plaintiff herein alleges:

24 1. This is a Complaint for money damages of greater than \$25,000.00 and is within the  
jurisdiction of the above-captioned court (unlimited jurisdiction), and said court is the proper court  
for the trial of this action.

25 2. At all relevant times, Plaintiff, THOMAS ARMSTRONG ("Plaintiff" or "ARMSTRONG")  
is, and at all times mentioned herein was, an individual residing and/or authorized to do business in  
the County of San Diego, State of California. Plaintiff has satisfied his administrative remedies,  
having timely filed a charge with the Department of Fair Employment and Housing (see attached as  
Exhibit "A," a true and correct copy of Plaintiff's Right to Sue Notice, dated April 30, 2019), and  
having timely filed an administrative complaint with Grossmont College (see attached as Exhibit

1       “B,” a true and correct copy of Grossmont College’s Notice of Rejection of Claim, dated April 24,  
2       2019).

3       3.       At all times mentioned, Defendant, GROSSMONT CUYAMACA COMMUNITY  
4       COLLEGE DISTRICT (hereinafter “GCCCD”), a California Community College district and a  
5       member institution of the California Community Colleges System (hereinafter “CCCS”), is and at  
6       all times herein mentioned was a public education institution, public entity, government entity,  
7       and/or municipal entity duly organized and existing the law of the State of California, located in the  
8       City of El Cajon, County of San Diego.

9       4.       The true names and capacities whether individual, corporate, associate, or otherwise of  
10      Defendants DOES 1 through 50 are unknown to Plaintiff, who therefore sues these Defendants by  
11      such fictitious names, and will amend this complaint to show their true names and capacities when  
12      ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named  
13      Defendants is responsible in some manner for the occurrences herein alleged, and the Plaintiff’s  
14      damages as herein alleged were proximately caused by that conduct. (GCCCD and DOES 1 through  
15      50 shall collectively be referred to herein as “Defendants.”)

16      5.       Plaintiff is ignorant of the true names of Defendants DOES 1 through 50, inclusive, and has  
17      therefore sued them by the foregoing names which are fictitious, and is informed and believes and  
18      thereon alleges that each of said defendants claims an interest in the property hereinafter described  
19      and which is the subject of this action, and Plaintiff asks that when their true names are discovered,  
20      this complaint may be amended by inserting their true names in lieu of said fictitious names,  
21      together with apt and proper words to charge them.

22      6.       Plaintiff is informed and believes, and thereon alleges, that each DOES 1 through 25,  
23      inclusive, were the agent(s) of, employee(s) of, or related entities with interest to Defendants, and at  
24      all relevant times was acting within the purpose and scope of said agency, employment, and/or  
25      relationship.

26      7.       Plaintiff is informed and believes, and thereon alleges, that each DOES 26 through 50,  
27      inclusive were the agent(s) of, employee(s) of, or related entities with interest to Defendants, and at  
28

1 all relevant times was acting within the purpose and scope of said agency, employment, and/or  
2 relationship.

3 **FACTUAL BACKGROUND**

4 8. On or about August 15, 2016, ARMSTRONG was hired by GCCCD as the Associate Dean  
5 of Athletics at Grossmont College, located at or near 8800 Grossmont College Drive, in the City of  
6 El Cajon, State of California, County of San Diego.

7 9. On or about June 1, 2017, ARMSTRONG was extended beyond his one-year initial  
8 employment term to extend to a mandatory two-year contract term pursuant to the terms and  
9 conditions of his employment between GCCCD and ARMSTRONG's employment position within  
10 GCCCD's employment classifications, and also pursuant to a collective bargaining agreement  
11 between GCCCD and the Grossmont Cuyamaca Community College District Administrators'  
12 Association, of which ARMSTRONG is, and for all relevant times mentioned herein was, a  
13 member. Said term is set to expire on or about June 30, 2019.

14 10. Dating back to approximately January 2019, ARMSTRONG, at the direction of GCCCD  
15 superiors, was advised to address the matter of use of Grossmont College facilities for private use,  
16 and particularly the reimbursement of facility fees toward Grossmont College, a task that was part  
17 of his scope of work and within the duties of his job description.

18 11. To enforce GCCCD policy, ARMSTRONG was to, and so did, meet with GCCCD  
19 employees under the purview of the athletic department, notably athletic coaches, staff and related  
20 personnel, to advise of GCCCD policy related to facilities use.

21 12. As a direct result of ARMSTRONG's attempts to enforce GCCCD policy related to use of  
22 Grossmont College facilities for matters other than use by Grossmont College, ARMSTRONG was  
23 met with hostility from athletic department faculty, staff, and personnel, notably Grossmont College  
24 baseball coach, Randy Abshier, among other similarly-situated GCCCD employees.

25 13. Based on the facts set forth above and further identified herein, GCCCD retaliated against  
26 ARMSTRONG due to the following:

27 (a) ARMSTRONG's desire to enforce GCCCD policy related to use of facilities;

(b) ARMSTRONG's intent to abide by mandatory requirement to report violations of Pacific Coast Athletic Conference (PCAC) regulations, notably Rule 3.5.7;

(c) ARMSTRONG's reporting of said violations to ARMSTRONG's superiors, notably GCCCD employee Dr. Marsha Gable, Ph.D.;

(d) ARMSTRONG's intent to self-report violations, as is required pursuant to GCCCD athletic department policy, California Community College Athletic Association (CCCAA) regulations, and PCAC policy;

(e) ARMSTRONG's intent to report potential Title IX violations; and

(f) Such other acts of reporting or intent to report violations of state and federal law, GCCCD policies and procedures, and CCCAA/PCAC regulations and policy.

14. Defendants have engaged in a deliberate pattern and practice to conceal compliance violations as to use of facilities, adherence to CCCAA regulations as to student-athlete participation relative to the GCCCD's baseball program and other athletic programs, and associated Title IX violations arising out of the District's intent to turn a blind eye to a male-only sport, specifically the baseball program, to the detriment of other athletic teams, and similarly to unfairly provide additional, illicit resources for said athletic programs.

15. Further, despite ARMSTRONG's efforts to run an open and honest compliance effort with PCAC as it relates to reported CCCAA violations of the baseball program, Defendants engaged and continue to engage in a deliberate effort to conceal information shared with the PCAC Commissioner's Office.

16. In fact, Defendants have, and for all purposes had, allowed the alleged violators, members of the baseball program staff and particularly Randy Abshier, to control the investigation prior to any information being shared with the PCAC Commissioner. Indeed, Defendants, by stripping ARMSTRONG of his responsibilities and of his desire to lawfully and truthfully perform his job duties, are attempting to frame ARMSTRONG as the scapegoat to the inevitable, the CCCAA's findings that the baseball program was in violation of several compliance matters. ARMSTRONG is informed and believes and thereon alleges that the baseball program, and potentially other programs, have since been found to be in violation of several regulations.

17. Despite ARMSTRONG's continued, documented insistence that GCCCD self-report violations and similarly timely and accurately respond to CCCAA compliance inquiries, Defendants continued to deliberately conceal information and sully ARMSTRONG's reputation.

18. Further, Defendants, through its intentional pattern of failing to report and enforce CCCAA regulations as well as facilities use issues relative to the baseball program and other athletic programs, have committed and/or are potential committing Title IX violations.

19. As a result of Defendants' unlawful, retaliatory conduct in violation of Govt. Code 12940(h), GCCCD placed ARMSTRONG on involuntary administrative leave on or about September 18, 2018, and thereafter issued a notice of non-renewal of his contract with GCCCD on or about October 16, 2018.

20. Such conduct by Defendants, both the placement on leave and notice of non-renewal of ARMSTRONG's contract, were adverse employment actions taken by Defendants against ARMSTRONG in retaliation for ARMSTRONG's actions as identified in paragraph 13, above, as such actions by Defendants were, and are, reasonably likely to adversely and materially affect ARMSTRONG's job status, professional reputation, future employment prospects, and/or opportunity for advancement in his career.

21. ARMSTRONG has been harmed by Defendants' retaliatory conduct in that ARMSTRONG's career is irreparably tarnished, having been placed on involuntary administrative leave and thereafter his non-renewal of his contractual term with GCCCD, which will forever be a part of his employment history, actions that will for all intents and purposes blackball ARMSTRONG from substantially similar employment.

## **FIRST CAUSE OF ACTION: ALL DEFENDANTS**

## Retaliation [Govt. Code §12940(h)]

22. Plaintiff hereby incorporates by reference paragraphs 1 through 21, inclusive, as if fully set forth herein.

23. Plaintiff engaged in protected activity described herein in paragraphs 13, 14, 15 and 17, inclusive, *supra*.

24. As a direct and proximate result of Plaintiff's actions as described herein and referenced in the preceding paragraph, Defendants subjected Plaintiff to adverse employment actions as described herein and notably paragraphs 19 and 20, inclusive.

25. Plaintiff's actions as described in paragraphs 13, 14, 15 and 17, inclusive, *supra*, was a substantial motivating reason for Defendants' decision(s) to take adverse employment action against Plaintiff.

26. As a direct and proximate result of Defendants' retaliatory actions as described herein, ARMSTRONG has been damaged via loss of income, loss of future income, damage to professional reputation, mental anguish, anxiety, depression, emotional distress, and will not be able to, or may never, find similarly or comparable employment due to Defendants' sulling his reputation and employment record. Even if ARMSTRONG is able to find such comparable employment in the future, his career arc has been irreparably harmed.

27. Defendants' retaliatory conduct as against ARMSTRONG as identified herein is, and for all purposes was, a substantial factor in causing ARMSTRONG economic and non-economic damages, and such conduct also exposes Defendants' to punitive damages and statutory penalties.

## **SECOND CAUSE OF ACTION: ALL DEFENDANTS**

## **Violation of Labor Code §1102.5**

28. Plaintiff hereby incorporates by reference paragraphs 1 through 21, inclusive, as if fully set forth herein.

29. Plaintiff engaged in protected activity described herein in paragraphs 13, 14, 15 and 17, inclusive, *supra*, as he believed and/or had reasonable cause to believe Defendants' acts and/or omissions were violations of laws and/or regulations.

30. As a direct and proximate result of Plaintiff's actions as described herein and referenced in the preceding paragraph, Defendants subjected Plaintiff to adverse employment actions as described herein and notably paragraphs 19 and 20, inclusive.

31. Plaintiff's actions as described in paragraphs 13, 14, 15 and 17, inclusive, *supra*, was a substantial motivating reason for Defendants' decision(s) to take adverse employment action against Plaintiff.

1 32. As a direct and proximate result of Defendants' actions as described herein, ARMSTRONG  
2 has been damaged via loss of income, loss of future income, damage to professional reputation,  
3 mental anguish, anxiety, depression, emotional distress, and will not be able to, or may never, find  
4 similarly or comparable employment due to Defendants' sulling his reputation and employment  
5 record. Even if ARMSTRONG is able to find such comparable employment in the future, his career  
6 arc has been irreparably harmed.

7 33. Defendants' retaliatory conduct as against ARMSTRONG as identified herein is, and for all  
8 purposes was, a substantial factor in causing ARMSTRONG economic and non-economic damages,  
9 and such conduct also exposes Defendants' to punitive damages and statutory penalties.

### **THIRD CAUSE OF ACTION: ALL DEFENDANTS**

**Violation of Business & Professions Code section 17200, et seq. [Unfair Competition]**

12 34. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the  
13 preceding and subsequent paragraphs as though fully set forth herein.

14 35. California Business & Professions Code section 17200, *et seq.*, prohibits the engagement of  
15 any business acts or practices constituting unfair competition. Section 17200 defines “unfair  
16 competition” to mean and include “...any unlawful, unfair or fraudulent business act or practice.”

17 36. Defendants engaged in unlawful conduct toward Plaintiff in violation of California Labor  
18 Code sections 1102.5 and California Government Code section 12940(h), and have therefore,  
19 engaged in unlawful business acts or practices in violation of Business and Professions Code  
20 section 17200 *et seq.*

21 37. As a direct and proximate result of Defendants' unlawful and/or unfair business act or  
22 practices, Plaintiff has suffered an injury-in-fact and was deprived of money or property to which he  
23 has valid and cognizable claims.

24 38. The harm to Plaintiff resulting from Defendants' unlawful business acts or practices far  
25 outweighs whatever benefits, if any, such business practices have for Defendants.

26 39. In addition to all other damages properly recoverable, Plaintiff is entitled to all restitution  
27 damages arising from Defendants' unlawful business acts or practices, in an amount to be  
28 established according to proof plus interest.

1       40. Plaintiff is further entitled to cumulative damages pursuant to California Business and  
2 Professions Code section 17205, and an award of attorneys' fees pursuant to California Code of  
3 Civil Procedure section 1021.5.

4

5       **WHEREFORE**, Plaintiff, prays for judgment against Defendants, and each of them, as  
6 follows:

7           1. For compensatory damages, non-economic damages, general damages, and special  
8 damages according to proof;

9           2. For economic damages, including loss of income and loss of future earning capacity,  
10 and cumulative damages;

11           3. For penalties, costs and fees pursuant to Labor Code section 1102.5;

12           4. Attorneys' fees according to proof and pursuant to statute;

13           5. Prejudgment interest;

14           6. Costs of suit herein incurred;

15           7. Such other relief as the court deems just and proper; and

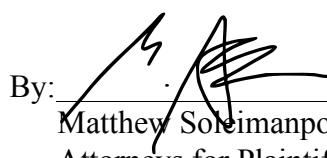
16           8. Exemplary/punitive damages.

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18       DATE: June 6, 2019

19           **SOLEIMAN, APC**

20       By:

21             
22           Matthew Soleimanpour  
23           Attorneys for Plaintiff  
24           THOMAS ARMSTRONG

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## **EXHIBIT “A”**



## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711  
<http://www.dfeh.ca.gov> | Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

April 30, 2019

Thomas Armstrong  
700 W E St., Ste. 1603  
San Diego, CA 92101

RE: **Notice of Case Closure and Right to Sue**  
DFEH Matter Number: 201904-05977430  
Right to Sue: Armstrong / Grossmont Cuyamaca Community College District et al.

Dear Thomas Armstrong,

This letter informs you that Department of Fair Employment and Housing received your request for a Right to Sue. The above-referenced complaint was **filed on April 23, 2019** with the Department of Fair Employment and Housing. As of April 23, 2019, your case is closed. Department of Fair Employment and housing will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure letter or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

## **EXHIBIT “B”**



GROSSMONT-CUYAMACA  
COMMUNITY COLLEGE DISTRICT

April 24, 2019

TO: Soleiman, APC  
Matthew Soleimanpour, Esq.  
700 W. E. St. Ste. 1603  
San Diego, CA 92101

RE: Thomas Armstrong Claim Rejection

Dear Mr. Soleimanpour:

Notice is hereby given that the claim which you presented to the Grossmont-Cuyamaca Community College District on or about March 14, 2019 was hereby rejected on April 24, 2019.

**WARNING**

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in a municipal or superior court of the State of California on this claim. See Government Code Section 945.6

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Sincerely,



Tim Corcoran  
Vice Chancellor of Human Resources  
Grossmont-Cuyamaca Community College District

*Vice Chancellor of Human Resources*

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8800 Grossmont College Drive, El Cajon, CA 92020-1799 Phone 619-644-7572  
Fax 619-644-7919